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MAR 31 1997

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
U.S. DEPARTMENT OF COMMERCE

In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations,
(Westley, California)

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MM DOCKET NO. 97-47
RM-8992

To: Chief, Allocations Branch

COMMENTS

Joe L. Gross herein submits his comments in support of the proposed allocation of Channel 238A to Westley, California. If the proposed channel is allotted, it is Mr. Gross' intention to apply for the channel and, if authorized, to build the station promptly.

The Notice of Proposed Rule Making in the above-captioned proceeding, DA 97-219 (released February 7, 1997), called for the submission of additional information regarding the attributes of Westley, California, in order to determine its status as a "community" under Beacon Broadcasting, 2 FCC Rcd 3469, aff'd, 2 FCC Rcd 7562 (1987); and Kenansville, Florida, 5 FCC Rcd 2663 (Policy & Rules Div. 1990), aff'd, 10 FCC Rcd 9831 (1995).

Under the Beacon Broadcasting and Kenansville tests, those seeking to allot a channel to an unincorporated locality must show that the residents of that locality "are commonly

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regarded as a distinct group.” Kenansville, 5 FCC Rcd at 2664. This can be proven by “testimony of local residents or by objective indications of the existence of a common perception that a locality’s populous constitutes a distinct ‘geographical population grouping.’” Beacon Broadcasting, 2 FCC Rcd at 7562. “Examples of objective indications of community status include the existence of political, commercial, [and] social . . . organizations and services in the community.” Kenansville, 5 FCC Rcd at 2664. The indicia of community status need not be overwhelming nor very extensive in that the test is not “too stringent.” Seven Locks Broadcasting Co., 37 FCC 82 (1964), cited in Kenansville, 10 FCC Rcd at 9832.

Here, the indicia of community status are more than sufficient. Westley is an agricultural community located approximately 11 miles southwest of Modesto, California. It has its own post office and volunteer fire department. Police services are provided by two county sheriff’s deputies who are assigned to Westley. Water, sewer and lighting services are provided through the Westley Community Services District, which is governed by a five-member board. Additionally, an elementary school is located in Westley. Several business are located in the community, including Westley Fuel Service, Westley Market and Westley Triangle Tire Repair and Truck Stop. An office of the Stanislaus County Housing Authority is located in Westley, as is the local growers association.

Attached are photographs taken by Mr. Gross depicting the community of Westley.

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In sum, Westley clearly constitutes a "distinct population grouping" and qualifies as a community for allotment purposes.¹

JOE L. GROSS

By Lisa M. Chandler

Matthew H. McCormick
Lisa M. Chandler

His Counsel

Reddy, Begley & McCormick
1001 22nd Street, N.W.
Suite 350
Washington, D.C. 20037

March 31, 1997

¹ The facts recited herein are supported by the attached declaration of Mr. Gross.

ATTACHMENT A

**Declaration of Joe L. Gross
(facsimile copy; original to be filed upon receipt)**

DECLARATION

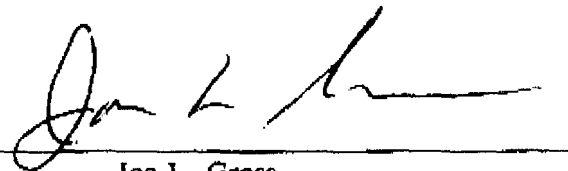
I, Joe L. Gross, do hereby declare and state:

I reside approximately 12 miles from Westley and am familiar with the community. I have gathered the facts pertaining to Westley recited in the foregoing Comments. Those facts are, to the best of my information, knowledge and belief, true and correct. Furthermore, I took the photographs attached to the Comments. If an FM frequency is allotted to Westley, it is my present intention to apply for the channel and, if authorized, to build a station promptly.

I declare, under penalty of perjury, that the foregoing is true and correct.

Signed this 31st day of March, 1997.

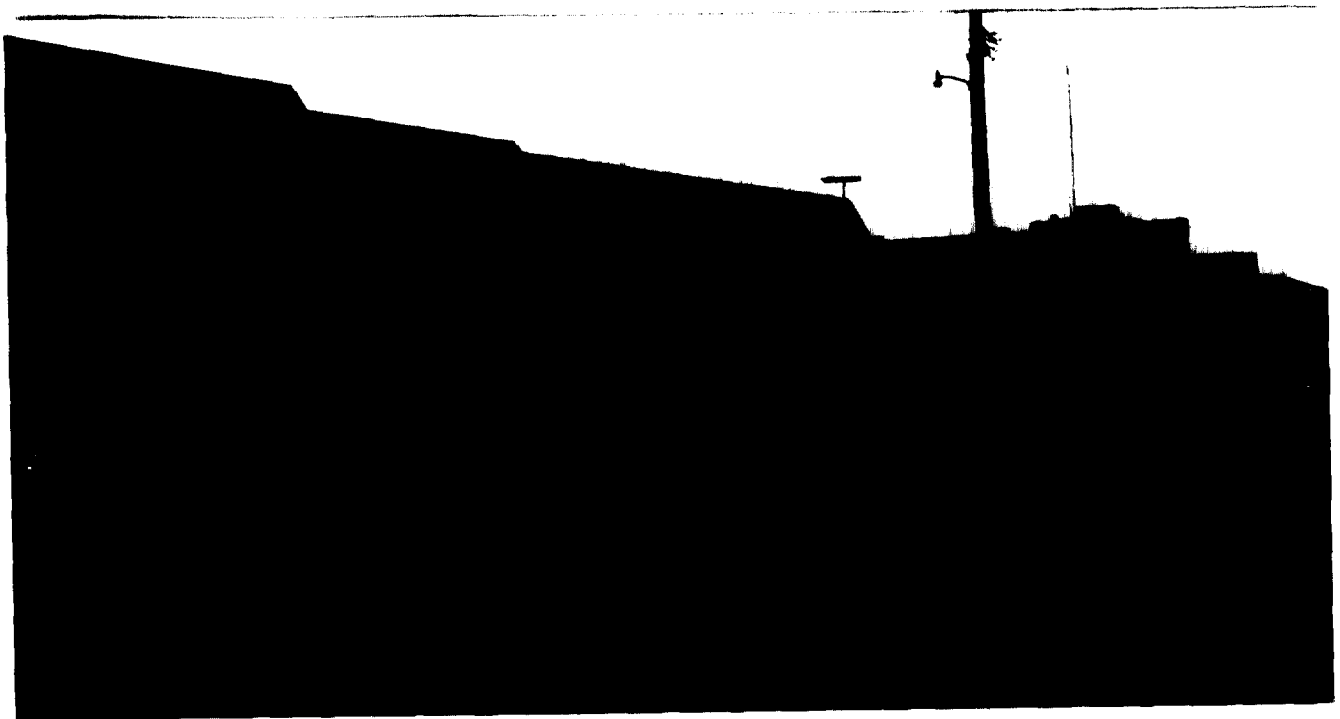
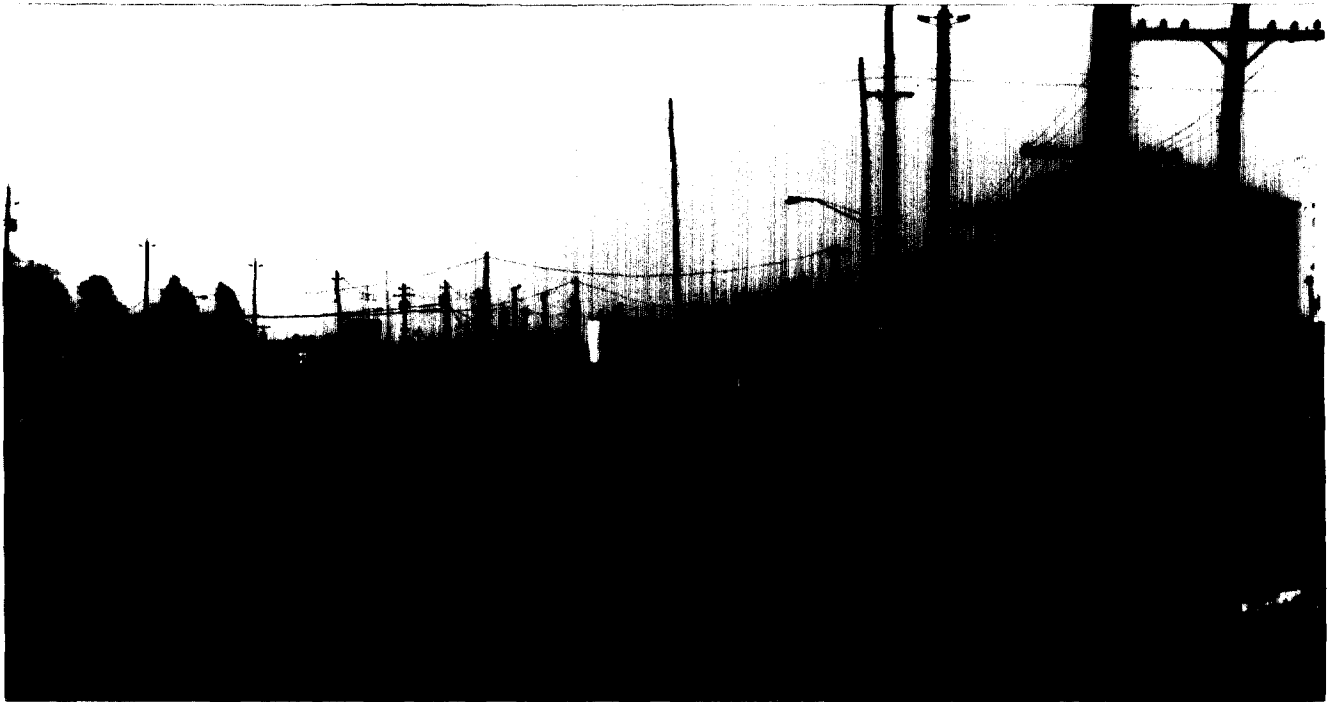
By



Joe L. Gross

ATTACHMENT B

Photographs of Westley, California

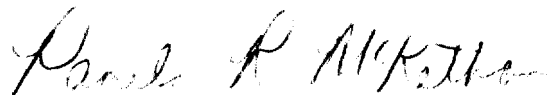


CERTIFICATE OF SERVICE

I, Pamela R. McKethan, hereby certify that on this 31st day of March, 1997, copies of the foregoing **COMMENTS** were hand-delivered or mailed, first-class, postage prepaid, to the following:

Henry E. Crawford, Esquire
1150 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036

Ms. Nancy Joyner*
Federal Communications Commission
Mass Media Bureau
2000 M Street, N.W., Room 557
Washington, D.C. 20554

A handwritten signature in cursive script, reading "Pamela R. McKethan", written over a horizontal line.

Pamela R. McKethan

* HAND DELIVERED